



JAN 03 2002

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In re Application of	:	
WU, et al.	:	
Application No.: 09/242,226	:	DECISION ON PETITIONS
PCT No.: PCT/US99/02670	:	UNDER
International Filing Date: 10 February 1999	:	37 CFR §§1.181 and 1.182
Priority Date: 10 February 1998	:	
Attorney Docket No.: 50103-148	:	
For: MAGNETIC RECORDING MEDIA	:	
WITH PATTERNED SUBSTRATE	:	

This is a decision on applicants' "Petition under 37 CFR 1.182" filed on 22 April 1999 and "Petition under 37 CFR 1.181" filed on 25 May 2001.

BACKGROUND

On 10 February 1999, applicants filed international application PCT/US99/02670, which claims a priority date of 10 February 1998. A Demand for international preliminary examination, in which the United States was elected, was timely filed on 25 August 1999. Accordingly, the thirty-month period to comply with the requirements for entry into the national stage in the United States expired at midnight on 10 August 2000.

On 10 February 1999, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the requisite basic national fee, a copy of the international application in English, and an executed declaration.

On 25 February 1999, the PCT Legal Office mailed applicants a "Letter Regarding Filing Under 35 U.S.C. 371," in which, applicants were informed that the papers filed 10 February 1999 did not reflect the international application number and thus, the Office could not process the papers. Furthermore, the papers would be retained in the PCT Legal Office for two months to await a response by applicants indicating the international application number.

On 16 January 2001, applicants submitted a status inquiry to the Office. On 08 May 2001, the Office responded informing applicants that the application could not be processed by the U.S. Designated/Elected Office because no international application number was provided. Another copy of the "Letter Regarding Filing Under 35 U.S.C. 371" originally mailed 25 February 2001, was attached to this response.

DISCUSSION

On 25 May 2001, applicants filed the instant petition under §1.181, requesting that the PCT Legal Office enter and consider applicants' petition under 37 CFR §1.182 and amendment submitted to the U.S. Patent and Trademark Office on 22 April 1999 in the instant application. Accompanying the petition were true copies of the papers applicants maintain were timely filed on 22 April 1999. In support thereof, applicants submitted a copy of their postcard receipt.

Consideration of Petition under §1.181 filed 25 May 2001

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. See MPEP 503.

A review of applicants' receipt reveals that it itemizes a "Petition under 37 CFR 1.182" and an "Amendment" as being hand carried to the Office. The receipt bears a OIPE receipt stamp date of 22 April 1999, reflecting receipt in the Office of those items on that date. Accordingly, it is concluded that applicant has shown that the "Petition under §1.182" and amendment were timely filed on 22 April 1999.

In view thereof, the petition under §1.181 is GRANTED.

Consideration of Petition under §1.182 filed 22 April 1999

Petitioner requests that the Office treat the identification of the international application number PCT/US99/02670 as having been provided in the 10 February 1999 papers. Included with this petition is payment of the petition fee by Deposit Account and an amendment to amend the specification to identify the PCT application number¹. Applicants assert that the application was both filed as a PCT application and entered the national stage in the United States on 10 February 1999. Thus, at the time of entering the national phase, the PCT number

¹ The amendment is improper and will not be entered. A national stage application of a PCT application cannot claim priority to the PCT application. The filing date of a national stage application is the international filing date. See 35 U.S.C. 363.

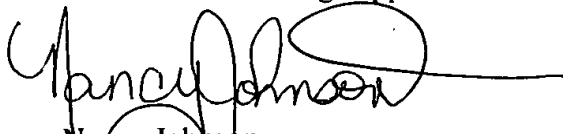
was not known. In addition, applicants assert that no new matter or legal ramifications exist with amending the specification to include the PCT application number.

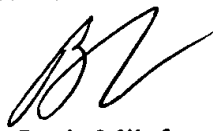
Petitioner's arguments have been considered and are well taken. Furthermore, the application identifying information provided on the transmittal letter filed 10 February 1999, i.e., the title, applicant-inventor information, priority date, and international filing date all correspond to that of PCT/US99/02670. Thus, it is concluded that the national stage papers filed 10 February 1999 sufficiently identify international application no. PCT/US99/02670. Pursuant to petitioner's request, the national stage papers assigned U.S. application number 09/242,226 will be treated as a U.S. national stage submission for PCT/US99/02670.

CONCLUSION

For the above reasons, the petition under 37 C.F.R. §1.182 is **GRANTED**.

The application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of U.S. application no. 09/242,226 as the U.S. national stage application of PCT/US99/02670.


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